

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA, ex rel.
ARLEN SMITH, JERRY HARRYMAN, and
ROTISH SINGH,

Case No. 2:14-cv-01982-SU

ORDER

Plaintiffs-Relators,

and

ARLEN SMITH, JERRY HARRYMAN, and
ROTISH SINGH, on behalf of themselves and on
behalf of all others similarly situated,

Plaintiffs,

v.

COLETTE S. PETERS, Director, Oregon
Department of Corrections; BRIAN BELLEQUE,
Acting Deputy Director, Oregon Department of
Corrections; MITCH MORROW, Deputy Director,
Oregon Department of Corrections; MIKE
GOWERS, Assistant Director, Oregon Department
of Corrections; STEVEN FRANKS, Administrator,
Oregon Department of Corrections; KIM
BROCKAMP, Administrator, Oregon Department
of Corrections; KETTY RATHS, Administrator,
Oregon Department of Corrections; ANITA
NELSON, Administrator and Manager of
Commissary Operations, Oregon Department of

Corrections; MARK NOOTH, Assistant
Director, Oregon Department of Corrections;
and JOHN DOES numbers one through ten,

Defendants.

HERNÁNDEZ, District Judge:

Magistrate Judge Sullivan issued a Findings and Recommendation [109] on October 29, 2019, in which she recommends the Court grant Defendants' Motion to Dismiss [98]. Plaintiffs timely filed objections to the Findings and Recommendation. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

The Court has carefully considered Plaintiffs' objections. As an initial matter, Plaintiffs raise a number of issues in their objections that were not briefed before Judge Sullivan. For example, Plaintiffs argue they have successfully pleaded a new claim for the "fraudulent use of interagency mail" under the False Claims Act. The Court declines to address issues raised for the first time on review. *See Brown v. Roe*, 279 F.3d 742, 745–46 (9th Cir. 2002) (rejecting the Fourth Circuit's holding that a district court must consider new arguments raised for the first time in an objection to a magistrate judge's F&R); *United States v. Howell*, 231 F.3d 615, 622 (9th Cir. 2000) (district courts have discretion to consider new evidence raised for the first time in an objection to a magistrate judge's F&R); *Olmos v. Ryan*, No. CV–11–00344–PHX–GMS, 2013 WL 3199831, at *8 (D. Ariz. June 24, 2013) ("Generally, a district court need not consider

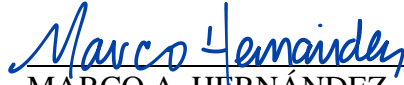
new arguments raised for the first time in objections to an R & R.”). The Court concludes that the remaining objections do not provide a basis to modify the recommendation. The Court has also reviewed the pertinent portions of the record *de novo* and finds no error in the Magistrate Judge’s Findings and Recommendation.

CONCLUSION

The Court adopts Magistrate Judge Sullivan’s Findings and Recommendation [109]. Accordingly, Defendants’ Motion to Dismiss [98] is GRANTED and this action is dismissed with prejudice and without leave to amend.

IT IS SO ORDERED.

DATED: April 8, 2020.


MARCO A. HERNÁNDEZ
United States District Judge